



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: AOI Systems, Inc.

File: B-240768

Date: August 31, 1990

Richard J. Royston for the protester.
Gregory H. Petkoff, Esq., Department of the Air Force, for
the agency.
James M. Cunningham, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Offer of a foreign company is not subject to the application of the Balance of Payments Program price differential where end product is manufactured in one of the designated countries listed by regulation for exemption from the price differential.
2. There is no requirement that a procuring agency equalize whatever competitive advantage a foreign firm may have because the firm is not subject to certain solicitation provisions, such as socio-economic requirements, applicable to United States concerns.

DECISION

AOI Systems, Inc. has protested the award of a contract to Orbot, Inc., under solicitation No. F09650-90-R-0094, issued by the Warner Robins Air Logistics Center for an optical inspection system.

We dismiss the protest without obtaining a fully documented report from the Air Force, since the protest does not state a legally valid basis of protest. See 4 C.F.R. § 21.3(m) (1990).

Although AOI acknowledges that Orbot offered a substantially lower price AOI also alleges that since the product to be supplied by Orbot under the contract is manufactured in Israel (unlike AOI's product, which is alleged to be manufactured in the United States) Orbot's price should have been increased for price evaluation purposes by 50 percent as provided for in the "Balance of Payments" provision of

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the solicitation. AOI argues that it should have been awarded the contract because it is the low offeror if Orbot's price is so increased.

The Balance of Payments Program, as implemented by Federal Acquisition Regulation (FAR) § 25.303(b) (FAC 84-53), provides that each foreign offer shall be adjusted for evaluation purposes by increasing the offer by 50 percent. Nevertheless, the Balance of Payments Program differential has been waived with respect to the proposed acquisition of an "eligible product" (that is, an end product from any one of several designated countries--including Israel) under a procurement estimated to be at, or over, a certain dollar threshold. See FAR § 25.401 (FAC 84-51). The Air Force has informed us that the value of this procurement exceeds the threshold for waiver of the Balance of Payments differential. Consequently, it would be improper to apply the 50 percent differential to Orbot's offer, and Orbot's price remains low.

AOI also argues that Orbot enjoys an unfair competitive advantage for this procurement since it is not subject to certain solicitation provisions, such as socio-economic requirements, applicable to United States concerns. However, there is no requirement that a procuring agency equalize whatever competitive advantage a foreign firm may have because the firm is not subject to such solicitation requirements applicable to United States concerns. Technical Sys., Inc., 66 Comp. Gen. 297 (1987), 87-1 CPD ¶ 240.

We dismiss the protest.

John F. Mitchell
Assistant General Counsel